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 15 Protective Life Insurance Company, successor-
 16 in-interest to Chase Insurance Life and Annuity
 17 Company, formerly known as Federal Kemper
 18 Life Assurance Company

19 UNITED STATES DISTRICT COURT
 20 NORTHERN DISTRICT OF CALIFORNIA

21 MARY L. TUTTLE,

22 Plaintiff,

23 vs.

24 CHASE INSURANCE LIFE AND ANNUITY
 25 COMPANY, FEDERAL KEMPER LIFE
 26 ASSURANCE CO., SELECTQUOTE
 27 INSURANCE SERVICES, and DOES 1-10,

28 Defendants.

Case No. C 07-03637 SI

**ANSWER OF DEFENDANT AND
 COUNTER-CLAIMANT PROTECTIVE
 LIFE INSURANCE COMPANY TO FIRST
 AMENDED COMPLAINT FOR DAMAGES**

Honorable Susan Illston

28 Defendant Protective Life Insurance Company ("Protective Life") successor-in-interest to
 29 Chase Insurance Life and Annuity Company, which was formerly known as Federal Kemper Life
 Assurance Company, hereby answers Plaintiff's First Amended Complaint for Damages (the
 "Complaint") by admitting, denying, and alleging as follows:

FIRST DEFENSE —

ANSWER TO GENERAL ALLEGATIONS

1. Protective Life admits the material allegations set forth in paragraph 1 of the Complaint.

2. Answering paragraph 2 of the Complaint, Protective Life admits that Chase Insurance Life and Annuity Company (“Chase Insurance”), which was merged into Protective Life in 2007, was a corporation incorporated under the laws of the State of Illinois with its home office in the State of Illinois. Except as expressly admitted, Protective Life denies the remaining allegations set forth in this paragraph.

3. Answering paragraph 3 of the Complaint, Protective Life admits that Federal Kemper Life Assurance Company (“Federal Kemper”) was a corporation incorporated under the laws of the State of Illinois with its home office in the State of Illinois. Except as expressly admitted, Protective Life denies the remaining allegations set forth in this paragraph.

4. Answering paragraph 4 of the Complaint, Protective Life admits that Selectquote Insurance Services (“SelectQuote”) is, and as all relevant times was, duly licensed by the State of California as life insurance agents and was authorized to act on behalf of Chase Insurance and Federal Kemper as company appointments. Protective Life admits that the principal place of business of SelectQuote is and was at all relevant times in San Francisco, California. Protective Life is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in this paragraph.

5. Answering paragraph 5 of the Complaint, Protective Life admits that defendants Chase Insurance and Federal Kemper were insurance companies duly qualified to conduct insurance business in California. Protective Life is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in this paragraph.

6. Protective Life is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6.

7. Answering paragraph 7 of the Complaint, Protective Life admits that Federal Kemper sold the life insurance policy insuring the life of James R. Tuttle ("decedent"), policy number

1 FK3395030 (the "Policy"), with a face amount of \$100,000.00, to decedent. Protective Life further
2 admits that, in the application for the Policy, decedent designated Mary Tuttle ("Tuttle") as the
3 primary beneficiary and that Protective Life issued the Policy in accordance with that designation.
4 Protective Life further admits that the Policy was issued effective April 16, 2004. Except as
5 expressly admitted, Protective Life denies the remaining allegations set forth in this paragraph.

6 8. Protective Life admits the material allegations set forth in paragraph 8 of the
7 Complaint.

8 9. Answering paragraph 9 of the Complaint, Protective Life admits that Mary Tuttle
9 notified Chase Insurance of decedent's death on October 24, 2005. Protective Life further admits
10 that Chase Insurance received a claim form from Tuttle on August 21, 2006, which Tuttle signed and
11 dated March 30, 2006. Except as expressly admitted, Protective Life denies the remaining
12 allegations set forth in this paragraph.

13 10. Protective Life admits that it declined Tuttle's claim and informed her that it was
14 rescinding the Policy. Except as expressly admitted, Protective Life denies the remaining allegations
15 set forth in this paragraph.

SECOND DEFENSE –

ANSWER TO FIRST CAUSE OF ACTION

BREACH OF CONTRACT

11. Answering paragraph 11 of the Complaint, Protective Life incorporates by reference its answers to the allegations set forth in paragraphs 1 through 10 of the Complaint.

12. Answering paragraph 12 of the Complaint, Protective Life admits that Chase Insurance received a claim form from Tuttle on August 21, 2006, which Tuttle signed and dated March 30, 2006. Protective Life further admits that Protective Life declined Tuttle's claim and rescinded the Policy due to material misrepresentations decedent made on his application signed on March 27, 2004 (the "Application") for the Policy. Except as expressly admitted, Protective Life denies the remaining allegations set forth in this paragraph.

13. Protective Life denies each and every allegation set forth in paragraphs 13, 14, 15,

and 16 of the Complaint.

THIRD DEFENSE —

ANSWER TO SECOND CAUSE OF ACTION

BREACH OF COVENANT OF GOOD FAITH-INSURER DEFENDANTS

14. Answering paragraph 17 of the Complaint, Protective Life incorporates by reference its answers to the allegations set forth in paragraphs 1 through 16 of the Complaint.

15. Protective Life admits the material allegations set forth in paragraph 18 of the Complaint.

16. Protective Life denies each and every allegation set forth in paragraphs 19, 20 and 21 of the Complaint.

FOURTH DEFENSE -

ANSWER TO THIRD CAUSE OF ACTION

MISREPRESENTATION

17. Answering paragraph 22 of the Complaint, Protective Life incorporates by reference its answers to the allegations set forth in paragraphs 1 through 21 of the Complaint.

18. Protective Life denies each and every allegation set forth in paragraph 23 of the Complaint.

19. Answering paragraph 24 of the Complaint, Protective Life admits that SelectQuote provided decedent with the Application, which decedent filled out and submitted to Federal Kemper. Except as expressly admitted, Protective Life denies the remaining allegations set forth in this paragraph.

20. Protective Life denies each and every allegation set forth in paragraphs 25 and 26 of the Complaint.

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1 **FIFTH DEFENSE -**

2 **ANSWER TO FOURTH CAUSE OF ACTION**

3 **FRAUD**

4 21. Protective Life admits the material allegations set forth in paragraph 27 of the
5 Complaint.

7 **SIXTH DEFENSE -**

8 **ANSWER TO FIFTH CAUSE OF ACTION**

9 **INTENTIONAL AND NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS**

10 22. Answering paragraph 28 of the Complaint, Protective Life incorporates by reference
11 its answers to the allegations set forth in paragraphs 1 through 27 of the Complaint.

12 23. Protective Life denies each and every allegation set forth in paragraphs 29, 30, 31, 32,
13 33, 34, 35, 36 and 37 of the Complaint.

15 **SEVENTH DEFENSE -**

16 **ANSWER TO SIXTH CAUSE OF ACTION**

17 **INTENTIONAL AND NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS**

18 24. Protective Life admits the material allegations set forth in paragraph 38 of the
19 Complaint.

20 **EIGHTH DEFENSE**

21 **(Failure to State a Claim for Relief)**

22 25. The Complaint and each purported cause of action therein fail to state a claim against
23 Protective Life on which relief can be granted.

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NINTH DEFENSE

(Genuine Dispute)

26. The Complaint's claim for breach of the covenant of good faith and fair dealing is barred because there exists a genuine issue of law or fact which precludes a finding that Protective Life acted unreasonably given the circumstances.

TENTH DEFENSE

(Privilege)

27. Each and every action or statement made by the Protective Life to or with reference to Tuttle was a good faith assertion of its rights and therefore was privileged.

ELEVENTH DEFENSE

(Privilege)

28. Each and every action or statement made by Protective Life, to or with reference to Tuttle, was privileged under California Civil Code Section 47.

TWELFTH DEFENSE

(Failure to Mitigate)

29. Tuttle has failed and continues to fail to take reasonable steps to mitigate or minimize her alleged damages, if any. Tuttle's recovery, if any, must be reduced accordingly.

THIRTEENTH DEFENSE

(Tuttle's Comparative Fault)

30. Some or all of Tuttle's claims are barred because Tuttle failed to exercise ordinary care on her own behalf, which negligence and carelessness was a proximate cause of some portion, up to and including the whole thereof, of injuries and damages complained of in this action and Tuttle's recovery, if any, is barred or reduced accordingly to the principles of comparative fault.

FOURTEENTH DEFENSE

(Intervening Cause)

31. The injuries and damages of which Tuttle complains were proximately caused or contributed to by the acts of other persons and/or entities. These acts were an intervening, supervening, and superseding cause of the damages, if any, of which Tuttle alleges she suffered, thereby barring Tuttle from any recovery against Protective Life.

FIFTEENTH DEFENSE

(No Intent to Deceive)

32. Tuttle's claims are barred because Protective Life lacked the intent to deceive.

SIXTEENTH DEFENSE

(Failure to State a Claim to Attorney's Fees)

33. The Complaint and each purported claim for relief therein fail to state facts sufficient to entitle Tuttle to an award of attorneys' fees.

SEVENTEENTH DEFENSE

(Policy Terms, Conditions and Limits to Liability)

34. Plaintiff's claims are banned in whole or in part by the terms, conditions and limits contained in or incorporated by reference, expressly or impliedly, in the policy under which she seeks benefits.

SEVENTEENTH DEFENSE

(Rescission)

35. The Complaint, including each purported cause of action therein, is barred because the insurance policy in question was validly rescinded due to material misrepresentations in the

1 application.

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3 **EIGHTEENTH DEFENSE**

4 **(Concealment)**

5 36. The Complaint and each cause of action therein are barred by the concealment of
6 known material facts on the application for insurance.

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8 **NINETEENTH DEFENSE**

9 **(Misrepresentation)**

10 37. The Complaint and each cause of action therein are barred by the misrepresentation
11 of known material facts on the application for insurance.

12 **TWENTIETH DEFENSE**

13 **(Unclean Hands)**

14 38. The Complaint and each cause of action therein are barred by the doctrine of unclean
15 hands.

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17 **TWENTY-FIRST DEFENSE**

18 **(Failure to State a Claim for Punitive Damages)**

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20 39. The Complaint and each purported claim therein fail to state a claim for punitive or
21 exemplary damages against Protective Life.

22 **TWENTY-SECOND DEFENSE**

23 **(Statutory Invalidity)**

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25 40. The law under which Tuttle's claim for punitive damages is made is invalid on its
26 face or as applied to Protective Life pursuant to Article I, Section 10, Article IV, Section 2, and the
27 First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States and
28 state Constitution.

1 **TWENTY-THIRD DEFENSE**

2 **(Equal Protection)**

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4 41. The provisions of state law limiting the amount of punitive damages which may be
5 awarded in specified types of cases while allowing unlimited punitive damages for other tortious
6 conduct constitute impermissible discrimination against those subject to unlimited punitive damage
7 awards, such as Protective Life, and in favor of those defendants not subject to unlimited punitive
8 damage awards, in violation of Article IV, Section 2, and the Fifth and Fourteenth Amendments of
9 the United States Constitution and Article I, Section 7 of the state Constitution.

10 **TWENTY-FOURTH DEFENSE**

11 **(Due Process)**

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13 42. The application of state law regarding punitive or exemplary damages to Protective
14 Life in this case is impermissibly vague, imprecise, and inconsistent, in violation of the rights of
15 defendants guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution
16 and the state Constitution.

17 **OTHER DEFENSES**

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19 43. Protective Life has insufficient knowledge or information upon which to form a belief
20 as to whether it may have additional, as yet unstated, defenses available. Protective Life expressly
21 reserves the right to assert additional defenses in the event that discovery indicates that such
22 defenses are appropriate.

23 WHEREFORE, defendant Protective Life Insurance Company prays for judgment as
24 follows:

25 1. That Mary Tuttle take nothing by reason of her First Amended Complaint for
26 Damages on file herein;

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- 1 2. For costs of suit incurred herein; and
2 3. For such other and further relief as the Court may deem just and proper.

3 DATED: October 18, 2007.

4 REED SMITH LLP

5 By //s// Linda B. Oliver

6 Linda B. Oliver

7 Eugenia S. Chern

8 Attorneys for Defendant Protective Life Insurance
9 Company, successor-in-interest to Chase Insurance
10 Life and Annuity Company, formerly known as
11 Federal Kemper Life Assurance Company

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